

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

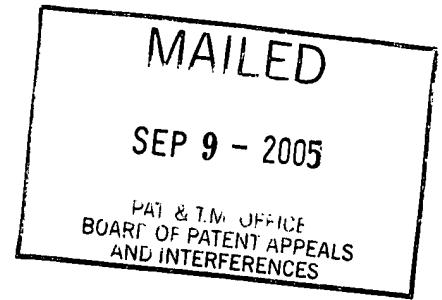
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte WARREN E. LANGDON

Appeal No. 2005-1848  
Application 09/672,398

ON BRIEF



Before THOMAS, HAIRSTON, and MACDONALD, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 20.

The disclosed invention relates to a method and system for providing music from a previously defined play list to a portable wireless music player.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method of providing programming to a portable wireless music player having a memory and being operative to transmit and receive information over a wireless link to a wireless service network, the portable wireless music player being only a relatively simple listening device with limited functionality so as not to be time critical in its operations, the wireless service network being in communication with a music service provider wherein the music service provider allows connections from remote clients, the method comprising:

connecting to the music service provider from a remote client;

defining a play list at the music service provider through user interaction at the remote client;

connecting to the music service provider with the portable wireless music player over the wireless service network;

downloading music to the portable wireless music player from the music service provider in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations; and

playing the music at the player.

The references relied on by the examiner are:

Hulyalkar et al. (Hulyalkar)	5,787,080	July 28, 1998
Eyal	6,389,467	May 14, 2002
	(effective filing date Jan. 24, 2000)	
La Porta et al. (La Porta)	6,434,134	Aug. 13, 2002
	(filed Dec. 11, 1998)	

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Claims 1 through 5, 15, 16 and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Eyal.

Claims 6 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyal in view of La Porta.

Claims 7, 8, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyal in view La Porta and Hulyalkar.

Claims 9 through 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyal in view of Hulyalkar.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyal in view of Hulyalkar and La Porta.

Reference is made to the final rejection, the briefs and the answer for the respective positions of the appellant and the examiner.

#### OPINION

We have carefully considered the entire record before us, and we will sustain all of the rejections of record.

Anticipation is established when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

We agree with all of the examiner's findings (final rejection, pages 2 through 6; answer, pages 4 through 7) that Eyal discloses all of the method steps and system structure set forth in claims 1 through 5, 15, 16 and 20.

Turning first to claim 1, appellant argues throughout the briefs that Eyal is not "a relatively simple listening device with limited functionality so as not to be time critical in its operations." Although the disclosed and claimed device is supposedly a limited function device, the disclosure lists functions such as the ability to play MP3, MPEG and Layer 3 formats, paging and voice mail/messaging (specification, pages 4 and 5). Appellant has never described the boundary between a limited function device and a broad function device. In the absence of such a boundary, we agree with the examiner (answer, page 6) that the PDAs and similar devices described in Eyal are limited function devices when compared to desktop PCs or even a laptop computer. We are also of the opinion that functionality is defined or limited by the user of such devices. A device may have many functions, but the user of the device may only use a limited number of the functions.

When we turn to appellant's disclosure (specification, page 4) for an understanding of the relevance of "not time critical," we find that the definition of this term is more elusive than the

definition of "limited functionality." In fact, the disclosure is completely silent as to such a definition. Since Eyal never states that the playing of music from the play list is time critical, we are of the opinion that Eyal meets this negative limitation. Stated differently, if the playing of the music was time critical, then we assume that Eyal would have stated such a fact. Thus, the anticipation rejection of claim 1 is sustained.

The anticipation rejection of claims 2 through 5, 15, 16 and 20 is sustained because appellant has chosen to let these claims stand or fall with claim 1 (brief, page 5).

The obviousness rejections of claims 6 through 14 and 17 through 19 are sustained because appellant has not presented any patentability arguments for these claims.

DECISION

The decision of the examiner rejecting claims 1 through 5, 15, 16 and 20 under 35 U.S.C. § 102(e) is affirmed, and the decision of the examiner rejecting claims 6 through 14 and 17 through 19 under 35 U.S.C. § 103(a) is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

KWH/dal

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